

1 EDMUND G. BROWN, JR., Attorney General
of the State of California
2 THOMAS LAZAR,
Supervising Deputy Attorney General
3 D. KENNETH BAUMGARTEN, State Bar No. 124371
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, California 92101
P.O. Box 85266
6 San Diego, California 92186-5266
Telephone: (619) 645-2195
7 Facsimile: (619) 645-2061
8 Attorneys for Complainant

9
10 **BEFORE THE**
11 **DIVISION OF MEDICAL QUALITY**
12 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 04-2005-167314

14 **MALABIKA DE, M.D.**
23 Lindberg
15 Irvine, CA 92620

DEFAULT DECISION
AND ORDER
(Cal. Gov. Code, § 11520)

16 Physician's and Surgeon's
Certificate No. A 69859

17 Respondent.
18

19 **FINDINGS OF FACT**

20 1. On June 16, 2006, Accusation No. 04-2005-167314 was filed against
21 Malabika De, M.D., (hereinafter "Respondent"). A true and correct copy of this Accusation is
22 attached hereto as **Attachment "A"** and is incorporated by reference as if fully set forth herein.

23 2. On or about September 24, 1999, the Medical Board of California
24 (hereinafter the "Board"), issued Physician's and Surgeon's Certificate No. A 69859 to
25 Respondent. A true and correct copy of the Certificate of Licensure for Respondent is attached
26 hereto as **Attachment "B"** and is incorporated by reference as if fully set forth herein.

27 On June 20, 2006, in the case entitled *David T. Thornton v. Malabika De, M.D.*, a
28 Noticed Interim Suspension Hearing was held at the Office of Administrative Hearings in Los

1 Angeles. Neither Respondent, nor counsel on her behalf, appeared at the hearing. Thereafter, an
2 Interim Order of Suspension was issued suspending Respondent's Physician's and Surgeon's
3 Certificate No. A 69859, prohibiting her from practicing medicine in California. As a result,
4 Respondent remains suspended from the practice of medicine.

5 3. On June 16, 2006, Respondent was served by certified mail with a copy of
6 Accusation No. 04-2005-167314, together with copies of all other statutorily required
7 documents, at her address of record on file with the Board: 23 Lindberg, Irvine, CA 92620.
8 See Declaration of Service by Certified Mail and First Class Mail which is attached hereto as
9 **Attachment "C"** and which is incorporated by reference as if fully set forth herein. This
10 package was returned to the Board marked "unclaimed." A second copy of the Accusation
11 package was then sent to Respondent on July 11, 2006, by regular mail, which was not returned
12 to the Board.

13 To date, Respondent has not filed a Notice of Defense in this matter. Service on
14 Respondent of a copy of Accusation No. 04-2005-167314, together with copies of all other
15 statutorily required documents, was effective as a matter of law under the provisions of
16 California Government Code section 11505, subdivision (c).

17 4. California Government Code section 11506 provides, in pertinent part, that:

18 "(a) Within 15 days after service of the accusation the Respondent may
19 file with the agency a notice of defense in which the Respondent may:

20 "(1) Request a hearing.

21 "..."

22 5. California Government Code section 11520 provides, in pertinent part, that:

23 "(a) If the Respondent fails to file a notice of defense or to appear at the
24 hearing, the agency may take action based upon the Respondent's express
25 admissions or upon other evidence and affidavits may be used as evidence without
26 any notice to Respondent; . . ."

27 6. Respondent has failed to file a Notice of Defense within fifteen (15) days
28 after service of a copy of Accusation No. 04-2005-167314 on her and, therefore, she has waived

1 her right to a hearing on the merits of the allegations contained therein. Pursuant to its authority
2 under California Government Code section 11520, the Division of Medical Quality (hereinafter
3 "Division") hereby finds that Respondent is in default. Accordingly, the Division shall take
4 action in the above-entitled matter without further hearing based upon the Respondent's express
5 admissions and other evidence and affidavits before it consisting of the evidence and affidavits
6 filed with the Office of Administrative Hearings on June 2, 2006, in support of the Petition for
7 Interim Order of Suspension in the case entitled *David T. Thornton v. Malabika De, M.D.*

8 7. The Accusation filed in this matter was filed before the Division of
9 Medical Quality (Division) for the Medical Board of California, Department of Consumer
10 Affairs, under the authority of Business and Professions Code section 822.

11 Section 822 of the Code states:

12 “ If a licensing agency determines that its licentiate's ability to practice his or her
13 profession safely is impaired because the licentiate is mentally ill, or physically ill
14 affecting competency, the licensing agency may take action by any one of the following
15 methods: (a) Revoking the licentiate's certificate or license. (b) Suspending the licentiate's
16 right to practice. (c) Placing the licentiate on probation. (d) Taking such other action in
17 relation to the licentiate as the licensing agency in its discretion deems proper. The
18 licensing agency shall not reinstate a revoked or suspended certificate or license until it
19 has received competent evidence of the absence or control of the condition which caused
20 its action and until it is satisfied that with due regard for the public health and safety the
21 person's right to practice his or her profession may be safely reinstated.”

22 8. On May 31, 2006, Respondent was served by both certified and regular,
23 first class mail, at her address of record with the Board: 23 Lindberg, Irvine, CA 92620, a
24 package of documents concerning the Board's intention to move for the suspension of
25 Respondent's Physician and Surgeon's Certificate No. A 69859. See Declaration of Service by
26 Certified Mail and First Class Mail which is attached hereto as **Attachment "D"** and
27 incorporated by reference as if fully set forth herein.

28 ///

1 Further, on June 12, 2006, Respondent was also personally served with the same
2 package of documents concerning the Board's intention to move for the suspension of
3 Respondent's Physician and Surgeon's Certificate No. A 69859. See Declaration of Personal
4 Service by Senior Investigator Dan Hitt, which is attached hereto as **Attachment "E"** and
5 incorporated by reference as if fully set forth herein.

6 The documents served on Respondent on May 31, 2006 and June 12, 2006,
7 included the following: Notice of Petition for Interim Order of Suspension, Petition for Interim
8 Order of Suspension, Memorandum of Points and Authorities and Exhibits in Support of Petition
9 for Interim Order of Suspension. A true and correct copy of these documents is attached hereto
10 as **Attachment "F"** and each are incorporated by reference as if fully set forth herein.^v

11 9. On June 20, 2006, in the case entitled *David T. Thornton v. Malabika De,*
12 *M.D.*, a Noticed Interim Suspension Hearing was held at the Office of Administrative Hearings
13 in Los Angeles. Neither Respondent, nor counsel on her behalf, appeared at the hearing.
14 Thereafter, an Interim Order of Suspension was issued suspending Respondent's Physician's and
15 Surgeon's Certificate No. A 69859, prohibiting her from practicing medicine in California. A
16 true and correct copy of the Interim Order of Suspension is attached hereto as **Attachment "G"**
17 and incorporated by reference as if fully set forth herein.

18 10. Respondent has subjected her Physician's and Surgeon's Certificate No.
19 A 69859 to action by the Division for the following reasons:

20 On or about June 9, 2005, the Medical Board received information that
21 Respondent has shown paranoid symptoms for the past 3 years. These symptoms were described
22 as Respondent being paranoid about ordinary tap water and her concern about getting HIV from
23 the water. In addition, Respondent has been attempting to self-prescribe antiviral treatment for
24 herself and has become upset because several pharmacies had refused to fill these prescriptions.
25 Respondent was further described as not being stable and that she will not answer the door to her

26 ///

27
28 1. The Exhibits in Support of Petition for Interim Order of Suspension are separately appended
to the "Default Decision Evidence Packet" included, but filed separately, with this Default Petition.

1 house if she were home. Reportedly, Respondent lives at home with her mother and has not
2 practiced medicine since completing her medical training in 1999.

3 On or about January 11, 2006, the Medical Board received additional information
4 that Respondent had been arrested by the Irvine Police Department and charged with assault with
5 a deadly weapon and elder abuse. The arrest report indicates that on January 5, 2005,
6 Respondent threw one or more water glasses at her mother and one of the glasses hit the mother
7 in the head. The arresting officer observed a large area of swelling on the mother's forehead
8 above her right eye. The mother refused medical treatment at that time. The mother told the
9 officer that her daughter did not say anything when she entered the room and threw the glasses at
10 her. The mother also believes that Respondent will eventually kill her and she now hides the
11 knives in the kitchen to keep them away from her daughter. She said she lives in constant fear of
12 Respondent's abuse, both mental and physical.

13 On or about January 31, 2006, Respondent pled Nolo Contendere to one
14 misdemeanor count of battery. The assault charge was dismissed. Imposition of sentence was
15 suspended and Respondent was placed on one year informal probation with terms and conditions.
16 She was ordered to pay a fine and was given credit for time served in the Orange County Jail.
17 Respondent was then released and a Protective Order was issued as to Respondent's mother.

18 **DETERMINATION OF ISSUES**

19 1. Pursuant to California Government Code section 11520, the Division of
20 Medical Quality hereby takes the within action based upon the evidence and affidavits contained
21 in the separate accompanying "Default Decision Evidence Packet" filed herewith.

22 2. Pursuant to its authority under California Government Code section
23 11520, and based on the evidence before it, the Division of Medical Quality hereby finds that the
24 allegations contained in Accusation No. 04-2005-167314, and the Findings of Fact contained in
25 paragraphs 1 through 10 above, and each of them, separately and severally, are true and correct.

26 3. Pursuant to its authority under California Government Code section
27 11520, and by reason of the Findings of Fact contained in paragraphs 1 through 10 above, and
28 Determination of Issues 1 and 2 above, the Division of Medical Quality hereby finds that

Respondent Malabika De, M.D., has subjected her Physician's and Surgeon's Certificate No. A 69859 to action under California Business and Professions Code section 822 in that she is currently suffering from a serious mental disorder such that she is unable to practice medicine competently and safely at the present time.

ORDER

Physician's and Surgeon's Certificate No. A 69859, heretofore issued by the Board to Respondent Malabika De, M.D., is hereby revoked for the reasons described in the Findings of Fact contained in paragraphs 1 through 10 above, the Determinations of Issues 1 and 2 set forth above, in that Respondent is currently suffering from a serious mental disorder such that she is unable to practice medicine competently and safely at the present time.

The effective date of this order is August 16, 2007.

Pursuant to California Government Code Section 11520, subdivision (c), within seven days after service on Respondent of a Decision based on Respondent's default, Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause. As used in subdivision (c), good cause includes, but is not limited to, any of the following: (1) Failure of the person to receive notice served pursuant to Section 11505. (2) Mistake, inadvertence, surprise, or excusable neglect.

This order is made this 17th day of July, 2007.



DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
CESAR A. ARISTEIGUIETA, M.D., F.A.C.E.P.
CHAIR
PANEL A

DKB/Default Decision & Order
Malabika De, M.D.

BILL LOCKYER, Attorney General
of the State of California
D. KENNETH BAUMGARTEN, State Bar No. 124371
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2195
Facsimile: (619) 645-2061

Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *June 16 2006*
BY *Cynthia Krupa* ANALYST

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MALABIKA DE, M.D.
23 Lindberg
Irvine, CA 92620

Physician's and Surgeon's
Certificate No. A 69859

Respondent.

Case No. 04-2005-167314

OAH No. L-2006-050783

A C C U S A T I O N

Complainant alleges:

PARTIES

1. David T. Thornton (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
2. On or about September 24, 1999, the Medical Board of California (hereinafter the "Board"), issued Physician's and Surgeon's Certificate No. A 69859 to Malabika De, M.D., (hereinafter "Respondent"). This Certificate was in full force and effect at all times relevant to the matters described herein and will expire on March 31, 2007, unless renewed.

///

///

3. On or about June 1, 2006, pursuant to Government Code §11529, a Petition for Interim Suspension of Respondent's Certificate No. A 69859 was filed with the Office of Administrative Hearings in Los Angeles. This administrative matter has been assigned case number L-2006-050783. The noticed hearing on this Petition for Interim Suspension is currently set for June 20, 2006 at the Office of Administrative Hearings in Los Angeles. The basis for this Petition for Interim Suspension is the Medical Board's contention that Respondent is presently mentally impaired to such an extent that permitting her to retain an active medical license will endanger the public health, safety and welfare.

JURISDICTION

4. This Accusation is brought before the Division of Medical Quality (Division) for the Medical Board of California, Department of Consumer Affairs, under the authority of Business and Professions Code section 822.

Section 822 of the Code states:

“ If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods: (a) Revoking the licentiate's certificate or license. (b) Suspending the licentiate's right to practice. (c) Placing the licentiate on probation. (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper. The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.”

CAUSE FOR REVOCATION OR SUSPENSION

(Mental Illness Impairing Ability to Practice Safely)

5. Respondent is subject to action under Code section 822 in that she is currently suffering from a serious mental disorder such that she is unable to practice medicine competently and safely at the present time. The circumstances are as follows:

1 On or about June 9, 2005, the Medical Board received information that
2 Respondent has shown paranoid symptoms for the past 3 years. These symptoms were described
3 as Respondent being paranoid about ordinary tap water and her concern about getting HIV from
4 the water. In addition, Respondent has been attempting to self-prescribe antiviral treatment for
5 herself and has become upset because several pharmacies had refused to fill these prescriptions.
6 Respondent was further described as not being stable and that she will not answer the door to her
7 house if she were home. Reportedly, Respondent lives at home with her mother and has not
8 practiced medicine since completing her medical training in 1999.

9 On or about January 11, 2006, the Medical Board received additional information
10 that Respondent had been arrested by the Irvine Police Department and charged with assault with
11 a deadly weapon and elder abuse. The arrest report indicates that on January 5, 2005,
12 Respondent threw one or more water glasses at her mother and one of the glasses hit the mother
13 in the head. The arresting officer observed a large area of swelling on the mother's forehead
14 above her right eye. The mother refused medical treatment at that time. The mother told the
15 officer that her daughter did not say anything when she entered the room and threw the glasses at
16 her. The mother also believes that Respondent will eventually kill her and she now hides the
17 knives in the kitchen to keep them away from her daughter. She said she lives in constant fear of
18 Respondent's abuse, both mental and physical.

19 On or about January 31, 2006, Respondent pled Nolo Contendere to one
20 misdemeanor count of battery. The assault charge was dismissed. Imposition of sentence was
21 suspended and Respondent was placed on one year informal probation with terms and conditions.
22 She was ordered to pay a fine and was given credit for time served in the Orange County Jail.
23 Respondent was then released and a Protective Order was issued as to Respondent's mother.

24 ///

25 ///

26 ///

27 ///


28 ///

1 P R A Y E R

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 4 1. Revoking or suspending Physician's and Surgeon's Certificate No.
5 A 69859, issued to MALABIKA DE, M.D.;
- 6 2. Revoking, suspending or denying approval of MALABIKA DE M.D.'s
7 authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 8 3. Ordering Respondent to pay the Board the reasonable costs of probation
9 monitoring if placed on probation; and
- 10 4. Taking such other and further action as deemed necessary and proper.

11 DATED: June 16, 2006

12
13 
14 David T. Thornton
15 Executive Director
16 Medical Board of California
17 Department of Consumer Affairs
18 State of California
19 Complainant

20
21
22
23
24
25
26
27
28
DKB/ De Accusation